IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

No. 602

FLETA JONES, Etc.,

Petitioner,

versus

AETNA CASUALTY & SURETY COMPANY,

Respondent.

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR CERTIORARI

May it please the Court:

The respondent has offered what it chooses to label "three fundamental bases" for the denial of the present petition for certiorari.

The first basis offered by respondent is that "petitioner failed to raise the issues sought to be reviewed by this Court" in the Court of First instance.

This contention of respondent is almost incredible, if we understand it correctly. The "issue" which petitioner seeks to have resolved ultimately in the instant case never arose, nor could it logically have arisen,

until the Louisiana *appellate* Court aggrieved petitioner's ward by *rendering* a judgment for less than the child's jury-found damages.

It is no answer to say that "since liability was admitted in this case, the appeal by respondent to the Louisiana Court of Appeal was and could have been only on the question of whether the award made by the jury was excessive and exorbitant." If it found the jury's verdict "excessive and exorbitant," the Court of Appeal could have, and we strenuously urge should have, ordered a *remittitur only* as an alternative to another jury trial. It is the failure of the Court to afford the alternative of a new trial to petitioner which raised for the first time in these proceedings the federal question upon which this Honorable Court's jurisdiction is invoked.

The second contention made by respondent is that "the petition for writs asks for a review of the decision of the wrong Court."

Respondent apparently urges that petitioner should have asked this Honorable Court to grant certiorari to the Louisiana Intermediate Court of Appeal, rather than to the Supreme Court of Louisiana.

This contention is best answered by referring this Honorable Court to its own proceedings in *Jackson v. Lykes Bros. Steamship Co., Inc.*, No. 575, October Term, 1966, decided May 8, 1967, on Writ of Certiorari to the *Supreme Court* of Louisiana (249 La. 460, 187 So. 2d 441) which had found "no error of law" in the

decision of the State Court of Appeal, Fourth Circuit (185 So. 2d 342); petitioner, in the instant case, has followed the identical procedure employed by Mrs. Jackson.

Finally, respondent says that "the contention of petitioner is void of merit."

This assertion by respondent, and the purportedly supporting portion of its brief in regard thereto, deals, of course, with the intrinsic merits of petitioner's case and, therefore, is prematurely made at this juncture. Moreover, it is pertinent to note that respondent has relied upon precedents which do not involve the right to trial by jury "in suits at common law" and has founded its attack on the merits of this case upon concepts not re-examined since *Walker v. Sauvinet*, 92 U. S. 678, 23 L.Ed. 667, which petitioner specifically asks this Honorable Court to re-evaluate, to repudiate and to overrule.

The applicability, *vel non*, of the Seventh Amendment to the Constitution of the United States is far too important a matter to be disposed of summarily by this Honorable Court.

The basic constitutional question posed by petitioner's application herein should be reconsidered only after review on *certiorari* and upon full and complete written and oral arguments of all parties directly and indirectly concerned with the intrinsic merits of this case. Therefore, petitioner's application for a writ

of certiorari to the Supreme Court of Louisiana should be granted.

All of which is

Respectfully submitted,

ROBERT B. NEBLETT, JR.
LEONARD FUHRER

BY_____

602 Murray Street
Alexandria, Louisiana
ATTORNEYS FOR
PETITIONER

Of Counsel:
NEBLETT & FUHRER
Alexandria, Louisiana
SAMUEL C. GAINSBURGH
New Orleans, Louisiana

CERTIFICATE

I, the undersigned member of the Bar of this Court, do hereby certify that a copy of the above and foregoing Brief in Reply to Respondent's Brief in Opposition to Petitioner's Application for a Writ of Certiorari has been served upon the Respondent herein by depositing the same in the United States Mails, air mail postage prepaid, addressed to Richard H. Switzer, Esq., 500 Slattery Building, Shreveport, Louisiana, at New Orleans, Louisiana, this _____ day of October, 1967.

Samuel C. Gainsburgh
1718 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112
Of Counsel